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**Before the
Federal Communications Commission
Washington, D.C. 20554**

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DISPATCHED

In the Matter of

**Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Athens and Doraville, Georgia)**

MB Docket No. 03-190
RM-10738

REPORT AND ORDER

Adopted: September 23, 2004

Released: September 27, 2004

By the Assistant Chief, Audio Division:

1. The Audio Division has before it the *Notice of Proposed Rule Making* in this proceeding proposing the reallocation of Channel 238C1 from Athens to Doraville, Georgia, and modification of the license of Station WTBS to specify operation on Channel 238C1 at Doraville.¹ Cox Radio, Inc. and CXR Holdings, Inc. (“Cox Radio”) and Infinity Broadcasting Corporation (“Infinity Broadcasting”) filed Comments. Cox Radio and Infinity Broadcasting filed Reply Comments. For the reasons discussed below, we are reallocating Channel 238C1 from Athens to Doraville, Georgia, and are modifying the Station WTBS license to specify Doraville as its community of license.

Background

2. At the request of Cox Radio, Inc. and CXR Holdings, Inc., licensee of Station WTBS, Channel 238C1, Athens, Georgia, the *Notice* in this proceeding proposed the reallocation of Channel 238C1 to Doraville, Georgia, and modification of the Station WTBS license to specify Doraville as the community of license.² The proposal was filed pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.³ *Community of License* requires that any reallocation proposal result in a preferential arrangement of allotments using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.⁴ In support of its proposal, Cox Radio states that this reallocation will result in Doraville (with a population of 9,862

¹ *Athens and Doraville, Georgia*, 18 FCC Rcd 17627 (MB 2003).

² CXR Holdings, Inc. is the licensee of Station WTBS, Athens, Georgia. CXR Holdings, Inc. is a wholly owned subsidiary of Cox Radio, Inc.

³ See *Modification of FM and TV Authorizations to Specify a New Community of License* ("Community of License"), 4 FCC Rcd 4870 (1989), *recon. granted in part* 5 FCC Rcd 7094 (1990).

⁴ 90 FCC 2d 88 (1988). The FM allotment priorities are: (1) First fulltime aural service;; (2) Second fulltime aural service; (3) First local service; and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3).

persons) having its first local service while Athens will continue to receive local service from seven stations. Cox Radio also proposes to reallocate Channel 238C1 to Doraville at the current Station WBTS transmitter site. As a result, there will be no areas gaining or losing service. In its Comments in opposition to the proposed reallocation, Infinity Broadcasting contends that due to the fact that Doraville is located within the Atlanta Urbanized Area, this proposal is merely an attempt by Cox Radio to serve Atlanta and is not entitled to a first local service preference.

Discussion

3. We are reallocating Channel 238C1 from Athens to Doraville, Georgia, and are modifying the Station WBTS license to specify Doraville as the community of license.⁵ As stated earlier, this will provide a first local service for Doraville while Athens will continue to receive local service from seven stations. We recognize that Doraville is located within the Atlanta Urbanized Area. In regard to the concerns expressed by Infinity Broadcasting, we are concerned with the potential migration of stations from lesser-served rural areas to well-served urban areas. For this reason, we will not apply a first local service preference of the FM allotment priorities when a station seeks to reallocate its channel to a suburban community in or near an Urbanized Area. In making such a determination, we apply existing precedents.⁶ In essence, we consider the extent the station will provide service to the entire Urbanized Area, the relative populations of the suburban and central city, and, most important of all, the independence of the suburban community.

4. In this situation, Doraville, with a population of 9,862 persons according to the 2000 U.S. Census, is entitled to consideration as a first local service. While this population is only 2.6 % of the population of Atlanta, this population total is substantial and supports consideration as a first local service.⁷ With respect to the coverage of the Atlanta Urbanized Area, we note that as a Class C1 facility, Station WBTS will invariably cover a significant portion of any Urbanized Area and the 33% coverage of the Atlanta Urbanized Area does not preclude favorable consideration as a first local service. In any event, the Commission has stated that these factors have less significance than evidence of independence.⁸

5. Consistent with the factors set forth in *Faye and Richard Tuck, supra*, we conclude that Doraville is not dependent upon the Atlanta Urbanized Area for its existence. Doraville, founded in 1871, is an incorporated community with a mayor and an elected city council. With an annual budget of approximately \$9,000,000, Doraville has its own police department, municipal court, recreational facilities and public library. In addition to local churches, civic organizations and health facilities, Cox Radio notes that in 1990, Doraville issued 1,500 business licenses. The major employer in Doraville is the General Motors assembly plant which employs approximately 3,600 persons. In regard to local media, the Doraville Citizen is published quarterly and the weekly North DeKalb Neighbor covers the communities of Doraville,

⁵ The reference coordinates for the Channel 238C1 allotment at Doraville, Georgia, are 34-07-32 and 83-51-32.

⁶ See e.g. *Huntington Broadcasting Co. v. FCC*, 192 F. 2d 33 (D.C. Cir. 1951); *RKO General, Inc., (KFRC)*, 5 FCC Rcd 3222 (1990); *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988).

⁷ See e.g. *Kankakee and Park Forest, Illinois*, 16 FCC Rcd 6768 (MB 2001) (finding Park Forest independent of the Chicago Urbanized Area with a population 0.8% of Chicago); *Ada, Newcastle and Watonga, Oklahoma*, 11 FCC Rcd 16896 (MMB 1996) (finding Newcastle independent of the Oklahoma City Urbanized Area with a population 0.9% of Oklahoma City).

⁸ *Headland, Alabama, and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995).

Chamblee and Dunwoody. Finally, Doraville has its own local post office.

6. In its Comments and Reply Comments, Infinity Broadcasting contends that this proposed reallocation is an attempt by Cox Radio to relocate Station WBTS to Atlanta. Even as a station licensed to Athens, Infinity Broadcasting alleges that Station WBTS has already "marketed and programmed" Station WBTS to serve Atlanta. In this regard, Infinity Broadcasting refers to a slogan referencing Atlanta and the fact that Station WBTS derives advertising revenue from Atlanta. Infinity Broadcasting also speculates that once WBTS is licensed to Doraville, Cox Radio will relocate the Station WBTS transmitter site closer to Atlanta and consolidate Station WBTS with its "consolidated cluster of newspapers, television and radio assets."

7. These arguments do not warrant denial of the proposed reallocation to Doraville. Each licensee is expected to be responsive to the issues facing its community of license. To this end, each licensee is required to list in its public inspection file the programs that have addressed the most significant community issues during the previous three months.⁹ These lists are retained in the public inspection file until final action on the station's renewal application. This represents a significant and meaningful requirement on a licensee to serve its community of license. This also provides a tangible means for the local residents, other interested parties and, if necessary, the Commission staff, to determine whether the station is serving the local community. Moreover, we require broadcast stations to maintain main studios in or near their communities of license and to assure adequate public access to each station. In this instance, Infinity Broadcasting has not identified any such programming, or absence thereof, which would suggest that Station WBTS is not serving Athens. In this regard, the fact that Station WBTS solicits advertising revenue from the Atlanta area and references the fact that its Class C1 facility will provide service to Atlanta in promotional literature does not constitute abandonment of its local service to Athens.

8. We also reject the argument that we should deny the proposed reallocation because Cox Radio may seek to relocate the Station WTBS transmitter site closer to Atlanta in which it already has significant media interests. According to Infinity Broadcasting, this would reinforce its argument that Station WTBS will serve Atlanta rather than Doraville. We reject this argument for two reasons. First, as discussed above, the proposed reallocation will provide a first local service to Doraville regardless of the fact that Cox Radio may, at some future date, seek relocation of the Station WTBS transmitter site. Second, to the extent Infinity Broadcasting suggests that this reallocation will contravene any multiple ownership rule, multiple ownership issues are not considered in conjunction with an allocation rulemaking proceeding.¹⁰ Instead, multiple ownership issues are considered in conjunction with the construction permit application to implement the rulemaking action. The Commission will send a copy of this *Report & Order* in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

9. Accordingly, pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective November 18, 2004, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed

⁹ 47 C.F.R. § 73.3526(e)(12).

¹⁰ *See Detroit Lakes and Barnesville, Minnesota, and Enderlin, North Dakota*, 17 FCC Rcd 25055 (MMB 2002); *see also Letter from Peter H. Doyle, Acting Chief, Audio Services Division, to Paul A. Cuelski, Esq. et al, File No. BAPH-20011101ABD (May 24, 2001).*

below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Athens, Georgia	284C1
Doraville, Georgia	238C1

10. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of CXR Holdings, Inc. for Station WTBS, Channel 238C1, Athens, Georgia, IS MODIFIED, to specify Doraville, Georgia, as its community of license, subject to the following conditions:

- (a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for construction permit (FCC Form 301) specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's rules, unless the proposed facilities are categorically excluded from environmental processing;
- (c) Nothing contained herein shall be construed to authorize a change in transmitter site or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's rules.

11. Pursuant to Sections 1.1104(1)(k) and (2)(k) of the Commission's Rules, any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rulemaking fee when filing the application to implement the change in community of license and/or upgrade. As a result of this proceeding, CXR Holdings, Inc. is required to submit a rulemaking fee in addition to the fee required for the application to effect the change in its community of license.

12. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

13. For further information concerning this proceeding, contact Robert Hayne, Media Bureau, (202) 418-2177.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau